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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/795,896 | 03/08/2004 | Alejandro Freire | 50815/DRK/K443 | 1525 |
| 23363 | 7590 | 05/03/2006 | EXAMINER | |
| CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068 | | | PHAM, HUONG Q | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3743 | |

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/795,896

Applicant(s)

FREIRE, ALEJANDRO

Examiner

Huong Q. Pham

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/28/2005 + 3/6/04</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 -6, 10-11, 13-17, 21, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Santos (4,881,529).

Santos teaches every claimed feature of claim 1 including a brace body comprising a flexible material with plurality of tunnels (perforated leather material) capable of being stretched to have a larger internal diameter, and at least one elongated insert 20, 22, 24, 26, 28, 29, 30 as recited in claim 1. As for claims 2-3, note that Santos ' device has two side edges (figure 1) , top and bottom edges, two engaging members 18, 36, 12.

Claims 1, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fox (3,964,474).

Fox teaches every claimed feature of claims 1, 12 including a brace body comprising a flexible material with at least one tunnel 20 capable of being stretched to have a larger internal diameter, and at least one elongated insert 10, a chin cup 19.

Claims 13, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarkozi (5,211,623)

Sarkozi teaches a brace body comprising a flexible material with plurality of tunnels (figure 9)) capable of being stretched to have a larger internal diameter, and plurality of inserts, two engaging members 21, 22, 23, 24, a chin cup (note figure 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7- 9, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Santos (4,881,529) in view of Veylupek (5,755,044) and Henderson (2,911,697) .

Note the comments above for the teaching of Santos. Veylupek teaches a device with a string 14 that are passed through guide tubes 84a , 84b, 80, 82 (figure 13) . Henderson teaches engaging members 15, 16 having apertures form therein with strings threaded through the apertures to adjust of the spacing of the engaging members 15, 16. In view of these teachings of and Henderson, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Santos with connecting means having strings that are passed throught tubes

in the tunnels and connected with engaging members 12 with apertures formed therein as recited in order to adjust and connect the side edges together. As for claim 8, note that the criticality of the recited sewn strings has not been established.

Claims 4, 16 are objected to because "the two engaging means" lacks proper antecedent basis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 7:15 AM - 3:45 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272 - 4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 28, 2006

A handwritten signature in black ink, reading "Michael A. Brown". The signature is written in a cursive style with a large, stylized "M" and a long, sweeping underline.

MICHAEL A. BROWN
PRIMARY EXAMINER